88-1813

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1988

THOMAS J. RALEY
Petitioner

v.

FRANKLIN W. HUGHES and SANDRA L. HUGHES
Respondents.

WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS
OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a decision by the state courts of Maryland refusing to set aside a fraudulent conveyance in an action between private parties constitutes a denial of due process where the decision is contrary to the settled law of that state and contrary to the undisputed facts of the case?

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OPINIONS BELOW

The judgment of the Circuit Court for Baltimore County, Maryland, rendered in open court is unreported and is included in the appendix at A-1. The order of the Court of Special Appeals of Maryland affirming the judgment of the Circuit Court for Baltimore County, Maryland, is unreported and is included in the appendix at A-7. The order of the Court of Appeals of Maryland denying certiorari to review the order of the Court of Special Appeals of Maryland is unreported and is included in the appendix at A-26.

JURISDICTION

The judgment of the Circuit Court for Baltimore County, Maryland, finding against the Petitioner-Plaintiff was entered on September 22, 1987. The order of the Court of Special Appeals of Maryland affirming the circuit court judgment was entered on September 26, 1988. The order of the Court of Appeals of Maryland denying certiorari to Petitioner was entered January 11, 1989. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3) (1948).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The fourteenth amendment to the United States Constitution provides in pertinent part that "nor shall any state deprive any person of life, liberty or property without due process of law[.]"

Md. Com. Law Code Ann. §§ 15-201 through -204 (1983) provides:

> **§ 15-201. Definitions**
>
> (a) In general.--In this subtitle the following words have the meanings indicated.
>
> (b) Assets.--(1) "Assets" means property of a debtor not exempt from liability for his debts.
>
> (2) "Assets" includes any property to the extent that the property is liable for any debts of a debtor.
>
> (c) Conveyance.--"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intan-

gible property, and also the creation of any lien or incumbrance.

(d) Creditor.--"Creditor" means a person who has any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

(e) Debt.--"Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent. (An. Code 1957, art. 39B, § 1; 1975, ch. 49, § 3.)

§ 15-202. Insolvency.

(a) In general.--A person is insolvent if the present fair market value of his assets is less than the amount required to pay his probable liability on his existing debts as they become absolute and matured.

(b) Partnerships.--In determining if a partnership is insolvent, there shall be added to the partnership property:

(1) The present fair market value of the separate assets of each general partner in excess of the amount probably suffi-

cient to meet the claims of his separate creditors; and

(2) The amount of any unpaid subscription to the partnership of each limited partner, if the present fair market value of the assets of the limited partner is probably sufficient to pay his debts, including the unpaid subscription. (An. Code 1957, art. 39B, § 2; 1975, ch. 49, § 3.)

§ 15-203. Fair consideration.

Fair consideration is given for property or an obligation, if:

(1) In exchange for the property or obligation, as a fair equivalent for it and in good faith, property is conveyed or an antecedent debt is satisfied; or

(2) The property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained. (An. Code 1957, art. 39B, § 3; 1975, ch. 49, § 3.)

§ 15-204. Conveyance by insolvent.

Every conveyance made and every obligation incurred by a person who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration. (An. Code 1957, art. 39B, § 4; 1975, ch. 49, § 3.)

Md. Fam. Law Code Ann. § 4-301(d)(2)(i) (1984) provides:

(2)(i) A transfer of property between spouses is invalid if made in prejudice of the rights of present creditors.

STATEMENT OF THE CASE

This action has arisen out of a civil dispute between private parties wherein the Plaintiff sought to set aside a fraudulent conveyance of stock from Defendant Franklin Hughes to Franklin Hughes and his wife SANDRA as tenants by the entireties. The conveyance operated to deprive Plaintiff of his ability to enforce his sizable judgment against Mr. Hughes.

At the trial on the merits held before the Circuit Court for Baltimore County on September 21 and 22, 1987, apart from the numerous contested factual issues before the court, the following undisputed facts were established.

In 1975, Petitioner sold a parcel of land together with an operating tavern

thereon to Defendant Franklin Hughes. The value of the property was fixed by its purchase price of $250,000 (A-28). In January 1978, the outstanding balance was rewritten into a new agreement containing a fixed payment schedule (A-29). At the time of the sale, the actual ownership of the property was transferred to F. Hughes, Inc., a corporation whose sole stockholder was Hughes (A-29). At some time or times between 1975 and 1977, Hughes and his wife SANDRA Hughes allegedly borrowed sums not in excess of $100,000 (A-35). At least $50,000 of those loan proceeds were used as capital expenditures for F. Hughes, Inc. to reduce certain debts which were in existence at the time of purchase (A-36).

In November 1978, Hughes ceased making payments on the note to Petitioner (A-39). At that time the balance due was $198,000 with interest accruing at the rate of 10% per annum. No subsequent payments were ever made (A-40). By the end of December 1979, Hughes and the corporation owed numerous creditors as well as tax arrears (A-41). Hughes also by then owed Petitioner $220,000, including $20,000 in interest accrued over the preceding 12 months (A-39). Hughes's total income for 1979 was $13,000 (A-42). At the very end of December 1979, Hughes transferred the stock in F. Hughes, Inc. and with it the tavern property and business to himself and his wife as tenants by the entireties, thereby ostensibly removing the stock and assets from the

reach of Petitioner and Hughes's other creditors (A-34, A-42). The consideration alleged to support the transfer was the antecedent debt or debts incurred by Mrs. Hughes (A-44).

In 1983, Petitioner sued Hughes on the note and obtained a judgment in the sum of $358,000 (A-37). Hereafter, when attempting to enforce his judgment, Petitioner discovered he was prevented from executing on the property and business because the corporate stock had been transferred into the tenancy by entireties (A-45). Petitioner then sought to avoid the transfer as a fraudulent conveyance by filing this suit against Mr. and Mrs. Hughes.

At the trial on the merits, after Petitioner established inter alia the

facts set forth above including the transfer of the stock in the face of a preexisting debt then in default, the Defendants did not put forth any tangible evidence to establish that Hughes was solvent at the time of the contested conveyance. Instead, Defendants presented mere unsupported, conclusory assertions of solvency offered by themselves and their accountant. Mr. Hughes said that "I was paying my bills" (A-46). His accountant said Hughes was solvent "to the best of my knowledge" (A-47). Mrs. Hughes said "we were going bankrupt. We didn't have any money" (A-48). Counsel for Defendants openly asserted that no proof of assets had to be made; that an unsupported statement of solvency was sufficient (A-49).

Accordingly, no evidence whatsoever was adduced to specifically establish that the fair market value of Hughes's assets were sufficient to pay his debts as they fell due. In fact, Defendants put on no evidence at all regarding the fair market value of Hughes's individual assets. To the contrary, the only evidence offered showed that he had no assets following the transfer (A-50).

After losing in the trial court, Petitioner appealed that decision to the Court of Special Appeals which affirmed (A-1, A-7). The Court of Appeals of Maryland denied certiorari (A-26).

The federal question presented is whether the denial of relief to Petitioner by the courts of the State of Maryland contrary to established law and

the undisputed facts of the case deprived Petitioner of his property without due process of law in contravention to his rights guaranteed by the fourteenth amendment. This issue did not arise until the Court of Appeals of Maryland denied Petitioner certiorari, thereby concluding Petitioner's state court remedies and giving rise to this constitutional issue.

ARGUMENT

THE COURTS OF THE STATE OF MARYLAND DEPRIVED PETITIONER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW BY ENTERING A DECISION AGAINST PETITIONER WHICH WAS CONTRARY TO ESTABLISHED LAW AND TO THE UNDISPUTED FACTS OF THE CASE, ALL OF WHICH SERVED TO DEPRIVE PETITIONER OF SUBSTANTIAL RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT.

Certiorari can be granted whenever a decision of a state court deprives a party of his rights under the fourteenth amendment to the Constitution of the United States. Turner v. State of Louisiana, 379 U.S. 466 (1965).

Where, in an action between private parties, a case is decided arbitrarily and capriciously in a manner which violates established principles of law and which is contrary to undisputed facts, the judgment constitutes a taking

of property without due process of law in violation of the fourteenth amendment. Postal Telegraph Cable Co. v. City of Newport, Kentucky, 247 U.S. 464 (1918); Williams v. Tooke, 108 F.2d 758 (5th Cir. 1940). Although states are not required to provide the right of appellate review, when they do a litigant continues to be protected from denials of due process as guaranteed by the fourteenth amendment. Griffin v. Illinois, 351 U.S. 12 (1956); In re Trader, 20 Md. App. 1, 315 A.2d 528 (1974).

The law in Maryland governing fraudulent conveyances is well established both by statute and by case authority. Md. Com. Law Code Ann. § 15-204 (1983) states in pertinent part that "[e]very conveyance made . . . by a

person who is insolvent or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is incurred without a fair consideration." See also Westminister Savings Bank v. Sauble, 183 Md. 628, 39 A.2d 862 (1944). M.C.L.C.A. § 15-203 defines fair consideration as a "fair equivalent" for the property conveyed, and, in the case of an antecedent debt, "not disproportionately small as compared to the value of the property . . . obtained." In addition to M.C.L.C.A. § 15-204, Md. Fam. Law. Code Ann. § 4-301(d)(2)(i) (1984) expressly invalidates any transfer between spouses which prejudices a creditor's rights. Ressmeyer v. Norwood, 117 Md. 320, 83 A. 633 (1926). When a husband transfers

property to himself and his wife as tenants by the entireties without fair consideration, the entire transaction is void if insolvency results. Pearce v. Micka, 62 Md. App. 265, 489 A.2d 48 (1985); Lutherville Supply & Equipment Co. v. Dimon, 232 Md. 195, 192 A.2d 496 (1963).

In Maryland, a creditor makes a prima facie case for a fraudulent transfer whenever he establishes a voluntary conveyance by a debtor without fair consideration while the transferor had an antecedent debt to the creditor. Lacey v. Van Royen, 295 Md. 80, 287 A.2d 91 (1970); Goodman v. Wineland, 61 Md. 449 (1884). Upon such a prima facie showing, the presumption arises that the debtor was either insolvent at the time

or was rendered insolvent by the conveyance, and the burden of proof is on the debtor to establish solvency and to otherwise uphold the gift. Lacey v. Van Royen, supra, 287 A.2d at 98. The presumption cannot be rebutted by mere words alone; hard evidence is required before the presumption is repelled. Damazo v. Wahby, 269 Md. 252, 305 A.2d 138 (1973). Accordingly, the mere recital of solvency in a deed from husband to wife is insufficient. Milholland v. Tiffany, 64 Md. 455, 2 A. 831 (1886). Indeed, even the production of deeds to other property to establish solvency is inadequate without proof of the existence of the land itself. Birely's Executors v. Staley, 5 G. & J. 432, 25 Am. Dec. 303 (1833).

Finally, where there was consideration but it was inadequate, the conveyance must be set aside except to the extent of the consideration given. Hull v. William Deering & Co., 80 Md. 424, 31 A. 416 (1895).

Defendants failed as a matter of law to establish that any consideration whatsoever passed. As a matter of law, transferee innocence cannot be interposed by a transferee spouse. However, for the benefit of this Petition only, Petitioner assumes arguendo that Mrs. Hughes can interpose the defense of innocence as to her half interest and that there was consideration given not exceeding 50% of the value of the assets fraudulently transferred. Even with these constraints operating to Defendants' benefit, an

application of the laws of Maryland as set forth above to the uncontested facts of this case clearly demonstrates the severe constitutional deprivation suffered by Petitioner before the Maryland courts.

The transfer at issue is one which can properly be set aside. Specifically, interspousal transfers from one spouse to both as tenants by the entireties are subject to being avoided as fraudulent conveyances, if the transferor was insolvent or was rendered insolvent by the conveyance and if it was not for fair consideration.

Hughes was insolvent at the time of the transfer or was rendered insolvent as a result. Petitioner established his prima facie case by shcwing that Hughes

made a transfer while in default on a preexisting indebtedness to Petitioner. By law, the burden shifted to the Defendants to prove that Hughes was solvent at the time of the transfer and remained solvent in spite of it. Because they relied upon conclusory assertions of solvency, by law the Defendants failed to meet their burden. Accordingly, for purposes of the trial in this case, Hughes was insolvent as a matter of law.

The conveyance by Hughes to the entireties was not made for a fair consideration. The transfer of an asset worth $250,000 or more based on an antecedent debt of $100,000 or less is a transfer based upon a disproportionately small consideration. As a matter of law, the transfer must be set aside for any

amount above the consideration given.

Based upon the foregoing, the Petitioner had at least the right to set aside that portion of Hughes's conveyance to himself, thereby entitling Petitioner to execute on 50% of the stock in the corporation. By denying Petitioner that relief, the state courts of Maryland have totally disregarded Petitioner's right to due process. Indeed, a mere six weeks before denying certiorari to Petitioner, the Maryland Court of Appeals granted certiorari in a fraudulent conveyances action and reversed on behalf of a plaintiff who had alleged that a prima facie showing had shifted the burden under circumstances far less compelling than those in this case. Wellcraft Marine Corp. v. Roeder, ___ Md. ___, 550

A.2d 377 (1988). By failing to permit Petitioner to set aside at least half of the transfer at issue, the Maryland courts totally disregarded established law and uncontested facts which clearly commanded a judgment in Petitioner's favor. By preventing Petitioner from enforcing his judgment, the Maryland courts have deprived him of his property without due process of law in violation of Petitioner's rights guaranteed by the fourteenth amendment.

CONCLUSION

For the foregoing reasons, the Petitioner Thomas J. Raley respectfully requests this Court to issue a writ of certiorari to the Court of Special Appeals of Maryland.

Respectfully submitted,

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v.

FRANKLIN W. HUGHES and SANDRA L. HUGHES
Respondents

WRIT OF CERTIORARI
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APPENDIX

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OPINION OF THE HON. LEONARD S. JACOBSON, ASSOCIATE JUDGE, IN THE CIRCUIT COURT FOR BALTIMORE COUNTY MARYLAND, CASE NO. 86-CG-2023, SEPTEMBER 22, 1987

THE COURT: Okay. Thank you. Thank you, Mr. Keller.

Gentlemen, I don't have much problem with this case after hearing all the testimony, frankly. I had a little problem at the end of the plaintiff's case on a motion, but everybody agrees that this case is brought pursuant to Subtitle 2 of Commercial Law 15-201 and the following sections. 15-201 is the definition section. 15-202 defines insolvency for the purposes of this section. 15-203 defines fair consideration. And 15-204, 205, 206, and 207 and 208 define the various conveyances which can be found to be fraudulent under the section.

We start in reverse with 15-208, conveyance of partnership property. And there is no evidence in this case that this was a conveyance of partnership property. So that that section is not applicable.

15-207, conveyance made with intent to defraud. Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud present or future creditors, is fraudulent as to both present and future creditors.

There is no evidence in this case of any intent to defraud.

206 covers conveyances made and obligations incurred without fair consideration when the person who makes the conveyance or enters into the obligation intends or believes that he

will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

There is no evidence in this case that that section is applicable.

15-205, every conveyance made without fair consideration when the person who makes it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors.

There is no evidence that that is applicable in this case, because there was no testimony, number one, that the conveyance left Mr. Hughes with unreasonably small capital. There is no evidence that the conveyance was made without fair consideration. As a matter of fact, the Beccio case stands for the

proposition that a conveyance to a relative without fraudulent intent and upon fair consideration, though rendering the grantor insolvent, is not necessarily a fraudulent conveyance.

Finally, 15-204, every conveyance made and every obligation incurred by a person who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration.

I have no evidence in this case that the conveyance was made without fair consideration. As a matter of fact, the evidence is to the contrary. The consideration for the conveyance of an interest in the corporation to Mrs. Hughes was her signing and obligating herself on the mortgage and the loans

which Mr. and Mrs. Hughes made to pay off their debts, principally the debts of the business.

Nor do I have any evidence that Mr. Hughes was insolvent on December 31, 1979 when he made that conveyance. I recognize that the burden of proof shifts to the defendants under the Lacey v. Van Royen case. And the Lacey v. Van Royen case also stands for the proposition that the presumption of law may be repelled by proving that the grantor at the time of the gift was possessed of other means amply sufficient to pay all of his debts, and the onus of so proving is upon those seeking to uphold the gift.

In this case, I find from the evidence in this case, which I find credible, that Mr. Hughes was able to pay his debts. I have no evidence in this case that under the definition of

insolvency in 15-202, that the fair market value of his assets was less than the amount required to pay his probable liability on his existing debts as they became absolute and matured. I, therefore, find for the defendants for costs.

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 91

September Term, 1988

THOMAS J. RALEY

v.

FRANKLIN W. HUGHES, ET UX.

Wilner
Bell, Rosalyn B.
Pollitt,

JJ.

PER CURIAM

Filed: September 26, 1988

Appellant, who holds a substantial judgment against Franklin W. Hughes, sued to set aside as fraudulent the transfer by Mr. Hughes of his stock in F.W. Hughes, Inc. to himself and his wife Sandra L. Hughes, as tenants by the entireties. The Circuit Court for Baltimore County, sitting without a jury, found no evidence that the transfer was made without fair consideration or that Mr. Hughes was insolvent when he made the transfer, and, on that basis, entered judgment for Mr. and Mrs. Hughes. Taking issue with those conclusions, appellant has brought this appeal.

At some point in the early 1970's, appellant and Hughes entered into an agreement to operate a business known as Holiday House Bar at 6427 Hartford Road in Baltimore City. In May, 1975, F. Hughes, Inc., a corporation formed by

Hughes and in which he was the sole stockholder (100 shares), bought appellant's interest in the business and the real estate. Title to the business was transferred to the corporation; title to the real estate was to be transferred by appellant when certain mortgages on the property, which the corporation assumed, were paid. As modified by agreement of January 11, 1978, the net sales price was $188,000 which Hughes, individually, agreed to pay in certain weekly installments, commencing August 1, 1977.[1] The parties added this caveat,

---

[1]For the first year (August 1, 1977 - July 30, 1978), Hughes was to pay $200 a week; for the next three years, the weekly payment was increased to $300 a week. As the unpaid balance was to bear interest at the rate of 10% per year, the parties acknowledged that, at the end of four years, the debt would aggregate $212,000, which Hughes was to amortize by weekly payments of $525.73, commencing August 1, 1981, and continuing through August 1, 1996.

however:

> "Mr. Raley agrees and recognizes that there may be times in the future during the term of this agreement that the full payments may not be made by Mr. Hughes, because of the uncertainties involved in the operation of the business in question. At such times as Mr. Hughes is not able to make the full payments, on a timely basis, he shall give notice to Mr. Raley of the fact. Mr. Raley agrees that this note will not be in default unless Mr. Hughes shall be in arrears in his payments for a period of three (3) months or longer. In the event Mr. Hughes is deemed to be in default, Mr. Raley agrees further that no action shall be taken on the note until he shall give a notice of default by registered mail to Mr. Hughes giving Mr. Hughes a period of two (2) weeks thereafter to correct any and all deficiencies in payment."

At some point in late 1978 or 1979, Mr. Hughes ceased making the weekly payments. Perhaps because appellant was incarcerated between 1977 and 1981, following his conviction for assault, no

formal action was taken. In April, 1981, he wrote to Mr. Hughes, informing him that, because the agreement was "exceedingly delinquent," he (appellant) was "currently preparing to foreclose on the property described therein." Notwithstanding this letter, nothing was done until January, 1983, when appellant sued Hughes for breach of contract.[2] On July 17, 1985, following a trial, the Circuit Court for Baltimore County entered judgment against Hughes in the amount of $358,085. A "Judgment Worksheet" showing how that amount was calculated indicates that the last payment on the debt was made on November 18, 1978.

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[2]No action to foreclose was ever filed; indeed, it is apparent that appellant had only a promissory note and thus no security interest in or mortgage on any specific property of Hughes.

In an effort to collect on his judgment, appellant sought to attach the 100 shares of stock of F. Hughes, Inc. that he believed were owned by Hughes. During that proceeding, evidence was produced that, on December 31, 1979, Hughes had transferred the stock to himself and his wife as tenants by the entireties, in consequence of which the attachment case was dismissed. This action, filed in May, 1986, followed, appellant claiming that (1) he was unaware of the transfer until December, 1985, (2) the transfer had been made without consideration, in contemplation of a judgment being entered against Hughes, to avoid his only major creditor (appellant), and to prevent the stock from being attached, and (3) the transfer was therefore fraudulent as to appellant. He asked that the transfer be set aside.

In announcing its decision at the end of the case, the court went through the several sections of the Commercial Law article comprising the subtitle on Fraudulent Conveyances and concluded that the relevant provisions were:

§ 15-204:

"Every conveyance made and every obligation incurred by a person who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration."

§ 15-202(a):

"A person is insolvent if the present fair market value of his assets is less than the amount required to pay his probable liability on his existing debts as they become absolute and matured."

and

§ 15-203:

"Fair consideration is given for property or an

obligation, if:

> (1) In exchange for the property or obligation, as a fair equivalent for it and in good faith, property is conveyed or an antecedent debt is satisfied; or
>
> (2) The property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained."

The court noted in its discussion § 15-207, making fraudulent a conveyance made "with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud present or future creditors" but found "no evidence in this case of any intent to defraud."

Mixing, to some extent, the concepts stated in §§ 15-204 and 15-207, appellant makes what is essentially an evidentiary attack on the court's conclusions. He urges that the burden was on Hughes to

sustain the validity of the transfer and that, on this record, Hughes failed to meet that burden. He points to "several badges of fraud" evident in the case, from which fraud may be inferred.

We are not concerned, at this stage, with burdens and standards of proof. The trial court gave no indication that it was placing a burden on the wrong party or applying an inappropriate standard. It simply found that the evidence did not establish the statutory prerequisites for setting aside the transfer. Our function, then, is to review the evidence, in a light most favorable to Hughes, to see if the court's conclusions were well-founded, i.e., whether there was any substantial evidence in support of them. We shall focus on the three critical findings: (1) that there was no actual intent to defraud appellant and therefore

no basis for applying § 15-207, (2) that there was "fair consideration" for the transfer, and (3) that, at the time of the transfer, Hughes was not insolvent and was not rendered insolvent by the transfer.

Mr. Hughes testified that he transferred the stock to the marital entity on the advice of his accountant, Melvin Rose. He stated, on cross-examination:

> "Q Did anyone ever tell you, Mr. Hughes, that if you transferred the stock to you and your wife, that would protect you against the creditor of Mr. Raley?
>
> A No, sir.
>
> Q Did you know, Mr. Hughes, that by transferring the shares of stock to you and your wife to tenants by the entireties, then Mr. Raley as a creditor could not attach that?
>
> A No, sir."

Mr. Rose testified that, at the

time, Hughes and the business, though solvent, had a lot of debts and were in arrears on some of them. He was unaware of the debt to appellant. He said that he advised Hughes to transfer the real estate from the corporation to himself and his wife, as tenants by the entireties, and then lease it back to the corporation, and also to put the stock in both names as tenants by the entireties. Rose, who was initially called as a witness for appellant but later testified as well for Hughes, was not asked and did not volunteer any particular reasons for his advice to the Hugheses. He said merely that he told them that the transfer "would be to their best interests."

Looking at all of the evidence, some of which we shall summarize below, a trier of fact could well have inferred an

intent to defraud from the circumstances surrounding the transfer. But such an inference is by no means compelled as a matter of law. The direct evidence bearing on Hughes's state of mind suffices to establish an innocent -- i.e., non-fraudulent -- intent, and that is the evidence upon which the court obviously, and permissibly, chose to rely. We shall read its statement that there was "no evidence in this case of any intent to defraud" in that light.

The evidence bearing on "fair consideration" is not altogether clear, as some of the testimony seemed to ramble between events in 1975, 1977, and 1979. It does appear, however, that (1) as part of the purchase of the business, Mr. and Mrs. Hughes were obliged to assume liability for or guarantee certain debts of the business, and (2) in order to

discharge or bring current some of those debts, Mr. Hughes joined with her husband in borrowing money from Equitable Trust Co., and, as security for the loan, placing a second mortgage on their home, which was titled as tenants by the entireties.[3] Mrs. Hughes testified that, when she signed that mortgage to Equitable Trust Co. in 1975, it was her understanding that she would be "a half owner" in the corporation. In 1977, Mr. and Mrs. Hughes had to consolidate a number of loans; according to Mr. Hughes, "at that time, we both had to sign on two different loans, General Electric and also Equitable Trust, both of us had to sign, and also we had to sign on our house."

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[3]The amount of the loan is not clear from this record. There are references to both $55,000 and $65,000.

A fair inference can be drawn that (1) Hughes could not have purchased the business or operated it for very long without his wife's cooperation in pledging the jointly held property as collateral and in co-signing notes to at least two financial institutions, (2) Mrs. Hughes expected to be given a 50% ownership in return, and (3) the consideration was "a fair equivalent" for the transfer of stock in 1979. See, in general, Kennard v. Banking & Trust Co., 176 Md. 499 (1939) and cases cited therein. The court's finding of "fair consideration" (or lack of evidence of no fair consideration) is therefore not clearly erroneous.

The evidence as to the solvency of Mr. Hughes was almost entirely opinion evidence. No financial statements of any kind bearing on his status in 1979 were

offered. Mr. Hughes testified, on the one hand, that, in 1979,

> "[w]hen Mr. Rose came to see me, we were in financial difficulties with taxes and mortgages. Just about every part of the business was in debt. And when Mr. Rose came to see me, he basically gave me a list of about five things I better do, or I'd be out of business."

He also stated, however, that, at that time, he was making payments on all of his debts and that he had not been sued by anyone. Mr. Rose, though unaware of the long-term debt to appellant, testified that, "to the best of my knowledge," Hughes was solvent at the time of the transfer and had remained solvent through the date of trial. He was unaware of any judgments against Hughes and said, directly:

> "Q Are you aware that Frank Hughes has sufficient assets to pay his debts as they accrue in the ordinary course of busi-

ness?

A Yes."

He iterated his opinion as to Hughes's solvency on cross-examination:

"Q I see. So in 1979, as you heard testimony, you have been sitting here, that there was a conveyance of stock from Mr. Hughes to Mr. Hughes and his wife. In 1979, you didn't know if he was solvent or not, did you? Yes or no, Mr. Rose?

. . .

A Yes. I knew that he was solvent.

Q How did you know that, Mr. Rose, if you didn't handle his personal affairs in 1979?

A His personal affairs were intertwined with the corporation. When you say his personal affairs, Mr. and Mrs. Hughes were the average American family, I would say, that have the usual income tax return, when there is just one W-2 form involved. They have their mortgage and responsibilities.

Had there been any judgment or any threatening letters by their mortgagee, I

> would certainly have come across it in my investigation of all of the affairs pertaining to the corporation, because they were both personally liable and responsible for various indebtedness."

In the absence of any financial statements indicating exactly what Mr. Hughes's assets, liabilities, income, and expenses were in 1979, the court was left with only this evidence from Mr. Hughes and his accountant that he was solvent and able to pay his bills as they came due. No objection was made to this evidence on any ground pursued in this appeal, and we therefore cannot fault the court for relying on it. Mr. Hughes never gave a reason why he stopped making the weekly payments called for by the agreement; he certainly did not attribute that decision to an inability to make the

payment.[4] On this record, we cannot say that the court was clearly erroneous in finding that Hughes was not insolvent, as that term is defined in § 15-202(a), at the time of the transfer.

At trial, appellant placed into evidence certain liquor license renewal applications and corporate tax returns filed after 1979 in which Hughes had indicated that he was still the sole owner of F. Hughes, Inc. From this, he argues that Hughes is equitably estopped from now denying that representation. The simple answer to this complaint is that it was not raised or decided below. Appellant's argument below was that, by making these assertions, Hughes had

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[4]In his own testimony, appellant recited a conversation in 1982 in which Hughes said simply, "well, I'm not going to pay anymore [sic], I think I've paid enough."

concealed the transfer, and that the concealment supported an inference of fraud. He never argued, however, that Hughes was estopped from asserting that the transfer had been made. Indeed, his action to set aside the transfer as fraudulent rested upon the assumption that the transfer had been made and that the record owners of the stock were Mr. and Mrs. Hughes. It is too late now to inject a whole new theory into the case. Md. Rule 8-131(a).

JUDGMENT AFFIRMED;
APPELLANT TO PAY THE COSTS.

THOMAS J. RALEY	)	IN THE
	)	COURT OF APPEALS
	)	OF MARYLAND
	)	
v.	)	
	)	
FRANKLIN W. HUGHES,	)	Petition Docket
	)	No. 412
et al.	)	
	)	September Term,
	)	1988
	)	(No. 91,
	)	September Term,
	)	1988
	)	Court of
	)	Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no

showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: January 11, 1989

EXCERPT FROM DEFENDANT-APPELLEES' BRIEF BEFORE THE COURT OF SPECIAL APPEALS OF MARYLAND, SEPTEMBER TERM 1988.

In May of 1975, the Appellant and the Appellee executed an agreement, providing that Mr. Hughes would take title to the business, including the assumption of rent, personal and tangible property of all kinds, furniture and fixtures, and liquor license for the sum of Two Hundred and Fifty Thousand Dollars ($250,000.00). Title was passed to Hughes pursuant to that agreement in 1975.

AGREEMENT - JANUARY 11, 1978

AGREEMENT

IT IS THIS 11 day of Jan, 1978 agreed to by and between THOMAS J. RALEY and FRANK HUGHES, upon good and valuable consideration, the receipt of which is acknowledged as follows:

The parties recognize and agree that in May of 1975 legal title to the business premises known as HOLIDAY HOUSE was transferred from Raley to F. Hughes, Inc., owned by Frank Hughes and that following that period, a refinancing took place whereby the legal title to the real property at 6427 Harford Road, Baltimore, Maryland was transferred from Thomas J. Raley to F. Hughes, Inc., and,

The parties further recognize that the payments to be made by Hughes to Raley for the complete transfer of the business, liquor license, fixtures,

furniture, equipment and real property, was established in 1975 at a figure of Two Hundred Thousand Dollars ($200,000.00). On the basis of the selling price of Two Hundred Thousand Dollars ($200,000.00), Mr. Raley has given credits reducing that figure by Twelve Thousand Dollars ($12,000.00 and has agreed to Mr. Hughes making a repayment of the balance of One Hundred Eighty Eight Thousand Dollars ($188,000.00) beginning on August 1, 1977, with the payments being made in the following manner:

A. For the first year, from August 1, 1977 through July 30, 1978, the sum of Two Hundred Dollars ($200.00) per week will be paid by Mr. Hughes to Mr. Raley pursuant to this agreement.

B. For the next three years, the sum of Three Hundred Dollars ($300.00)

per week will be paid by Mr. Hughes to Mr. Raley pursuant to this agreement.

The parties further agree that the interest rate to be charged on the financing of the balance is 10% per annum. They further agree that at the end of four (4) years there will be a deficit of Twenty Four Thousand Dollars ($24,000.00) being paid because of the reduced monthly and weekly payments.

It is further agreed that beginning with the fifth year, the parties agree to the fact that at that time Two Hundred Twelve Thousand Dollars ($212,000.00) will be due and owing, consisting of principal and interest. Mr. Hughes agrees at that point to begin making payments of Five Hundred Twenty Five Dollars and Seventy Three Cents ($525.73) per week from August 1, 1981 through August 1, 1996 or a period of fifteen

(15) years. The payments shall be made by Mr. Hughes and sent to Mr. Raley at such locations as he may direct.

Mr. Raley agrees and recognizes that there may be times in the future during the term of this agreement that the full payments may not be made by Mr. Hughes, because of the uncertainties involved in the operation of the business in question. At such times as Mr. Hughes is not able to make the full payments on a timely basis, he shall give notice to Mr. Raley of the fact. Mr. Raley agrees that this note will not be in default unless Mr. Hughes shall be in arrears in his payments for a period of three (3) months or longer. In the event Mr. Hughes is deemed to be in default, Mr. Raley agrees further that no action shall be taken on the note until he shall give a notice of default by registered mail to Mr. Hughes

giving Mr. Hughes a period of two (2) weeks thereafter to correct any and all deficiencies in payment.

The parties agree that this note shall be binding upon their heirs, personal representatives and successors.

Mr. Hughes may make partial repayments of this note without penalty at his election.

IN WITNESS WHEREOF, the parties have hereunto executed their hands and seals on the day and year first written above.

WITNESS:

_____ (SEAL)
THOMAS J. RALEY

_____

_____ (SEAL)
FRANK HUGHES

_____

EXCERPT FROM DEFENDANT-APPELLEES' BRIEF BEFORE THE COURT OF SPECIAL APPEALS OF MARYLAND, SPECIAL TERM 1988.

In December of 1979, in order to receive certain tax benefits and at the advice of his accountant, Appellee effected a transfer of all of his shares in F.W. Hughes, Inc. (100 shares on total) to himself and Sandra L. Hughes, his wife, as tenants by the entireties.

SEPTEMBER 22, 1987

Excerpt - Testimony of SANDRA Hughes:

Q Do you remember the amount of the mortgage to the Equitable Trust Company?

A Well, let's see. Sixty, sixty-five thousand for one loan, and around forty, forty-three for the other. Maybe $45,000 for the other loan.

SEPTEMBER 21, 1987

Excerpt - Testimony of Thomas Raley:

They borrowed the money to effectuate debts within the business and pay within the business, structure within. . . . to take care of debts within the business.

JUDGMENT AND EXCERPTS FROM
JUDGMENT WORKSHEET

THOMAS J. RALEY	*	IN THE
	*	CIRCUIT COURT
Plaintiff	*	FOR
	*	BALTIMORE COUNTY
VS:	*	CASE NO:
	*	83-L-149/146/127
FRANKLIN W. HUGHES	*	
	*	
Defendant	*	

* * * * * * * * * * * * * * * * * * *

JUDGMENT

Upon the trial held in this Court on July 17, 1985, and this Court having the opportunity to hear all the parties concerned and review all evidence submitted, it is this 11 day of September, 1985, by the Circuit Court for Baltimore County:

Ordered: That Judgment is hereby entered in favor of the Plaintiff and against the Defendant in the amount of $358,085.20 plus $98.11 interest per day

counting from July 18, 1985, plus court costs to be paid by the Defendant.

_____
JUDGE

Approved as to form:

_____
Melvyn J. Weinstock, Esquire
Weinberger, Weinstock, Sagner,
Stevan & Harris, P.A.
345 N. Charles Street
Baltimore, Maryland 21201-4355

Attorney for Defendant

JUDGMENT WORKSHEET
EXCERPT 1

11/78	Total due on 11/1/78	$197,479.09
	Payments received from 11/1/78-11/18/78	900.00
	Total due on 11/18/78	$196,579.09
	Interest due from 11/1/78-11/18/78 ($196,579.09 * 10% /12)	973.87
	Total due on 11/18/78	$197,552.96
	Interest accrued from 11/18/78-11/18/79 ($197,552.96 x .10)	19,775.30
11/18/79	Total due on 11/18/79	$217,308.26
	Interest accrued between 11/18/79-11/18/80 (217,308.26 x .1)	21,730.83
11/18/80	Total due on 11/18/80	$239,039.08

EXCERPT 2

7/17/85	Total due on 7/17/85	$373,085.20	
	Less credit given at trial	15,000.00	
		$358,085.20	
	Plus		
	Interest per day at 10%/year counting from July 18, 1985		$98.11 per day
	Plus		
	Court costs.		

SEPTEMBER 22, 1987

Excerpt - Testimony of Franklin Hughes:

When Mr. Rose came to see me, we were in financial difficulties with taxes and mortgages. Just about every part of the business was in debt.

SEPTEMBER 22, 1987

Excerpt - Testimony of Melvin Rose

Now, yesterday you submitted to the Court the corporate income tax return and you showed Mr. Hughes's income on the 1980 corporate income tax return as $13,000, did you not?

A Yes, I did.

. . . .

Q And back in 1979, did you have a resolution agreeing to transfer your interest to your wife and yourself?

A Yes. We transferred the stock in '79. I don't know what it is called.

Q Can you tell me why you had a resolution to do that, to transfer the stock?

A Well, I transferred the stock on the advise of Mr. Rose.

Q I understand. But can you tell me the reason why you had to do it by

resolution?

MR. WEINSTOCK: If you know.

A I don't know.

Q You don't know?

A I don't remember.

SEPTEMBER 22, 1987

Excerpt - Testimony of SANDRA Hughes:

Q When you got the interest in your stock -- strike that. In 1975, when you signed your name on the mortgage to the Equitable, was it your understanding that you would be a half owner in the 408 Holiday House, F. Hughes, Inc.?

A Yes.

SEPTEMBER 21, 1987

Excerpt - Testimony of Thomas Raley:

Q Mr. Raley, the stock transfer between Franklin W. Hughes to Franklin W. Hughes and Sandra L. Hughes, you first found out in 1985 that was done; is that correct?

A That's correct.

Q And when was that done, to your knowledge?

A Well, when I filed for seizing the stock, their answer back was the stock was not held by Mr. Hughes; it was held by them jointly.

SEPTEMBER 22, 1987

Excerpt - Testimony of Franklin Hughes:

Q Now, in 1979, when you transferred the stock, were you paying your bills?

A Yes, I was paying my bills.

SEPTEMBER 22, 1987

Excerpt - Testimony of Melvin Rose

Q At that time, was Mr. Hughes solvent?

A Yes, he was, to the best of my knowledge.

SEPTEMBER 22, 1987

Excerpt - Testimony of SANDRA Hughes:

A Well, we had a lot of bills to be paid. We didn't have any money.

Q Right.

A We just -- we were going bankrupt. We didn't have any money. There was no money coming in. Everybody -- we owed everybody.

SEPTEMBER 22, 1987

Excerpt - Argument to the court,
Melvyn Weinstock, counsel for
Defendants:

MR. WEINSTOCK: Your Honor, I didn't ask him what his assets were on direct. I only asked if he was solvent or insolvent. He says he was solvent. A man doesn't have to know the assets if he was solvent. I asked if there were any judgments, attachments, any outstanding foreclosures. He went through all of that and said no. The man doesn't have to know if he had stock in a gold mine in Ethiopia.

SEPTEMBER 22, 1987

Excerpt - Testimony of Melvin Rose

Q Now, what kinds of assets did Mr. Hughes have in 1979? He, personally, what kinds of assets did he have?

A None to my knowledge.

MR. WEINSTOCK: Your Honor, I would object to this.

THE COURT: Sustained.

MR. KELLER: Your Honor, he said that he was solvent. Certainly he has a basis or a foundation for that solvency.

THE COURT: He said he was solvent in 1980. He didn't know about 1979.

MR. KELLER: Fine

No. 88-1813

Supreme Court, U.S.
FILED
MAY 24 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THOMAS J. RALEY,

Petitioner,

v.

FRANKLIN W. HUGHES AND SANDRA L. HUGHES,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

MELVYN J. WEINSTOCK,*
STACY L. ALLEN,
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345 N. Charles Street,
Baltimore, Maryland 21201,
(301) 727-6700,
Attorneys for Respondents.

Counsel of Record.

The Daily Record Co., Baltimore, MD 21202

QUESTIONS PRESENTED

Whether decisions by both the Maryland Court of Special Appeals and Maryland Court of Appeals affirming the trial court's finding that a conveyance between husband and wife for fair consideration was not a "Fraudulent Conveyance" constitutes a violation of Due Process guaranteed by the Fourteenth Amendment.

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NO. 88-1813

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

THOMAS J. RALEY
PETITIONER

VS.

FRANKLIN W. HUGHES AND SANDRA HUGHES

RESPONDENTS

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

Respondents, Franklin W. Hughes and Sandra Hughes, his wife ("The Hugheses"), respond as follows to the Petition For Writ of Certiorari filed by Thomas J. Raley ("Raley").

COUNTERSTATEMENT OF THE CASE

This case originated as a Complaint filed by Raley to set aside an alleged fraudulent conveyance of stock by and between the Hugheses.

Originally tried on the merits without benefit of a jury, in the Circuit Court for Baltimore County, a verdict was rendered in favor of the Hugheses. Raley appealed that finding to the Court of Special Appeals.

In a Per Curiam opinion, the Court of Special Appeals affirmed the verdict of the trial court. A subsequent Petition for Writ of Certiorari to the Court of Appeals filed by Raley was denied.

FACTUAL BACKGROUND

Sometime in 1971 or 1972, Raley entered into an Agreement with Franklin Hughes to operate a bar known as the Holiday House in Baltimore, Maryland. Later, in May of 1975, Raley and Hughes executed an agreement of sale of the business. For the agreed price of Two Hundred Fifty Thousand Dollars ($250,000.00), Hughes assumed the lease, tangible and personal property, liquor license, and liabilities. See Petitioner's Appendix at page 28. To finance the purchase, Sandra Hughes agreed to pledge the Hughes' marital home as collateral for a $50,000.00 loan from Equitable Bank. As consideration for her acquiescence, Sandra Hughes was promised to be made "one half owner" of the bar.

Subsequently, in January of 1978, Raley and Hughes entered into yet another agreement concerning the bar and payment of the purchase price to Raley. See Petitioner's Appendix at page 29.

In December of 1979, in order to receive certain tax benefits and to fulfill the promise to his wife that he would make her "one half owner" of the bar, Franklin Hughes transferred all of his shares in a company known as F.W. Hughes, Inc, to himself and Sandra Hughes, as tenants by the entireties. At that time, Hughes was making payments pursuant to the 1978 Agreement, and was, according to the uncontroverted evidence adduced at trial, solvent.

On January 18, 1983, after being released from incarceration for a

conviction of common law assault, Raley filed suit against Franklin Hughes, individually, for breach of the 1978 agreement. On September 11, 1985, Raley obtained a judgment against Hughes, individually, in the amount of Three Hundred Fifty Eight Thousand Eighty-Five Dollars and Twenty Cents ($358,085.20) plus interest from July 11, 1985.

It was not until after obtaining the judgment against Franklin Hughes and attempting to collect it that Raley claims to have "discovered" the fact of the 1979 stock transfer. Following this discovery, and nearly six years after the stock transfer took place, Raley filed suit against the Hughes to set aside the stock transfer as an alleged fraudulent inter-spousel conveyance, citing as statutory

basis, the Maryland Fraudulent Conveyance Act.

The issue presented to this Court is whether the findings of three Maryland courts upholding the stock transfer are, as Raley suggests, tantamount to a denial of Due Process guaranteed by the Fourteenth Amendment.

REASONS FOR DENYING THIS WRIT

Rule 17 of the Rules of the Supreme Court is explicit in addressing the kinds of cases that this court will accept by way of a Writ of Certiorari. "A review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore..." Rule 17, Rules of the Supreme Court. (Emphasis Added).

Raley contends that the Maryland Courts' refusal to set aside an [alleged] fraudulent conveyance was contrary to the settled law of the State of Maryland and hence denied him due process of law. Raley's argument fails on two levels. Raley failed to meet the statutory requirements to prove that the stock transfer was a fraudulent conveyance. Specifically, Raley failed to rebut the testimony that Franklin Hughes was solvent at the time of the transfer; failed to prove that the transfer was made without adequate consideration being given by Sandra Hughes; and failed to prove that Sandra Hughes had any knowledge of or participated in the alleged fraud. Raley does not offer this Court any reasons that this case is of such an important

magnitude to warrant further scrutiny by the highest court in the land. Raley seems to be arguing that the mere fact of the results, which were adverse to him, constitute a denial of Due Process. If that assertion has any merit, the implications for this court are astounding.

I. The Decision Of The Maryland Courts Correctly Applied The Relevant Provisions Of The Fraudulent Conveyance Act To The Facts Of The Case.

The Hugheses concur with Raley's contention that the Uniform Fraudulent Conveyance Act is applicable to this case. Section 15-204 states:

> "Every conveyance made, and every obligation incurred by a person who is or will be rendered insolvent by it, is fraudulent as to creditors without intent, if the conveyance is made or the

> obligation is incurred without further consideration".

Md. Ann. Code Commercial Law Art. (1983 Repl. Vol.) Section 15-204.

What Raley repeatedly ignores, and what he would have this Court dismiss, is that the evidence and testimony at trial clearly demonstrated that Franklin Hughes was solvent when he transferred the stock to himself and his wife in December of 1979. Furthermore, Raley offered no evidence to rebut the Hughes proffer of evidence of solvency, and similarly offered no evidence that the conveyance rendered Franklin Hughes insolvent. To the contrary, both Raley and a witness in his case in chief testified that Franklin Hughes appeared to be solvent in December of 1979.

Indebtedness at the time of the conveyance may be prima facie evidence of fraud which throws the onus of proving solvency on the transferor, but where there is proof of valuable consideration, and proof that the transferor was solvent at the time of transfer, the transfer cannot be set aside, Ellinger v. Crowl, 17 Md. 361 (1861).

Raley aptly cites Lacey v. Van Royen a seminal case on point. Insolvency is a necessary element to striking down a [a conveyance] under ... the Uniform Fraudulent Conveyance Act. Lacey vs. Van Royen, 259 Md. 80, 92 (1970). The Hugheses satisfied their burden of proving solvency both by way of their direct testimony and that of their former accountant. In contrast, Raley failed

controvert the evidence of solvency.

On cross examination at trial, therewas the following colloquy between Raley and counsel for the Hugheses:

Q. December of 1979. Your lawyer filed a law suit on your behalf. Do you have any knowledge of the solvency of Frank W. Hughes?

A. The corporation?

Q. No. Frank W. Hughes, the man you have got a judgment against, not the corporation.

A. In 1979 did I have any idea of his solvency?

Q. Yes, whether he was insolvent or solvent?

A. He appeared solvent to me.

Raley's assertion that the

"Defendants did not put forth any tangible evidence to establish that Hughes was solvent at the time of the contested conveyance" is unfounded, and appears to set forth a novel standard of proof, that of "the tangibility" of the evidence. Not only did Raley himself testify that Hughes "appeared solvent" in 1979, but the Hughes also offered the direct testimony of their accountant, Melvin Rose, who testified as to Hughes' solvency:

Q. Mr. Rose, I want you to listen clearly to what I say and I want you to direct your answers only to what I ask you. In 1979, did you advise Mr. and Mrs. Raley -- strike that -- Mr. and Mrs. Hughes, a sobbing Mrs. Hughes, did you advise her and her husband that because she hade given her house as collateral

for a debt to Equitable Trust and General Electric Credit that it would be fair and wise and prudent for her to become an owner of the stock, one-half interest jointly as marital property in F. Hughes, Inc.?

A. Yes, I did.

Q. At that time, was Mr. Hughes solvent?

A. Yes, he was, to the best of my knowledge.

Q. Has he remained solvent to this date?

A. Yes, he has.

It is interesting to note that Melvin Rose was originally called as a witness in Raley's case in chief.

The second hurdle that a party

challenging a conveyance must surmount in order to prevail under Section 15-204 is a showing that the conveyance was made without fair consideration. Raley failed to present even a scintilla of evidence that this transfer was done without fair consideration.

The trial testimony demonstrates that in 1975, when additional capital was required to finance Hughes' purchase of the Holiday House Bar, Sandra Hughes acquiesced to signing a second mortgage on the Hughes' residence. Sandra Hughes further testified that she did so with the understanding that she would be made "one-half" owner of the business. The trial court found this to be adequate consideration to support the conveyance notwithstanding the fact that the

consideration predated the stock transfer.

> "Fair consideration is given for property or an obligation if:
>
> (1) in exchange for the property or obligation, as far as a fair equivalent for it and in good faith, property is conveyed or an antecedent debt is satisfied; or
>
> (2) the property or obligation is received to secure a present advance or antecedent debt in an amount not disproportionate ley small as compared to the value of the property or obligation obtained".

Md. Ann. Code, Commercial Law Art, (1983 Repl. Vol.) Section 15-203. (Emphasis added).

Sandra Hughes' testimony satisfied the burden of proving that the stock transfer was done in return for adequate and fair consideration. "Valuable consideration may consist in right, profit or benefit to one party or forbearance, detriment,

loss or responsibility given, suffered or undertaken by the other party . . ." Broaddus v. First National Bank, 161 Md, 116, 122 (1931). In the case at bar, Sandra Hughes undertook joint liability on a second mortgage to the Equitable Bank. This was surely adequate and fair consideration to support the conveyance. Kennard v. Elkton Banking & Trust Co., 176 Md. 499 (1939).

In his Petition, Raley reiterates ad infinitum, the same arguments raised at the trial level, in the Court of Special Appeals, and in the Court of Appeals; all of them unpersuasive and unsupported by the evidence introduced at trial. He can not now, as he tried to do in his appeal to The Court of Special Appeals, raise issues not preserved at trial. Nor can

he dupe this Court into believing that an adverse finding, which was based on application of the relevant law to the facts, is equivalent to a violation of Due Process.

Raley contends that the findings of the trial court, which were affirmed by the appellate courts, were "arbitrary and capricious" and "contrary to established principles of law" See Petition at page 15. Although he acknowledges that a litigant is not guaranteed the right of appellate review, he seems to make an incredible leap of logic to posit that a bar to his continued litigation somehow denied him a "property right" without due process. This argument, however, "novel", is both legally and factually unsupportable.

Former Rule 1086 of the Rules of the Court of Special Appeals, then in effect when this appeal was pending, governing the standard of review for cases tried without a jury:

> When an action has been tried by the lower court without a jury, this Court will review the case upon both the law and the evidence, but the judgment of the lower court will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses.
>
> The case at bar, as evidenced by the sixty pages of trial testimony, documentary evidence, and most importantly, but the very clear and

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Rule 8-131(c) of the Court of Appeals and Court of Special Appeals, effective July 1, 1988, embodies substantially the identical verbiage to former Rule 1086.

concise ruling of the trial court was decided based on the law and the evidence; and the Court of Special Appeals had no alternative but to affirm the decision, as more fully set forth in its per curiam opinion. See Petitioner's Appendix at p. 1-25.

CONCLUSION

From the body of his Petition, one can only postulate the real reason Raley has requested this extraordinary relief. As it was more fully developed at trial, after Raley obtained a judgment against Franklin Hughes in 1985 which he "discovered" to be uncollectible, he and his attorneys attempted to "build a case" for fraudulent conveyance, without first attempting to ascertain facts that would

fulfill the statutory requirements of such a cause of action. After failing to construct his case at trial, Raley attempted to correct these deficiencies by filing an appeal. Interestingly, the Court recognized Raley's attempt to raise new, unappealable issues in his brief, see Petitioner's Appendix at p. 25, but remained unconvinced by his arguments. Finally, in responding to a Writ of Certiorari filed by Raley in the Court of Appeals, the Court found that there was "no showing that a review by certiorari [was] desirable and in the public interest". See Petitioner's Appendix p. 26 - 27. This Court, too, should find that the issues presented in the instant Petition do not warrant further review and should find that the Petition is frivolous

and filed in bad faith.

Respondents, Franklin W. Hughes and Sandra L. Hughes, respectfully request that the Petition for Writ of Certiorari be denied, that the Respondents be awarded attorney's fees, and costs, and that sanctions be assessed against the Peitioner for bad faith of this Petition.

Melvyn J. Weinstock*
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*Counsel of Record